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Thirtieth meeting of Chairs of the human rights treaty bodies
New York, 29 May-1 June 2018
Item 5 of the provisional agenda
Follow-up to concluding observations, decisions and Views

Procedures of the human rights treaty bodies for following up on concluding observations, decisions and Views

Note by the Secretariat

Summary

At their twenty-ninth meeting, the Chairs of the human rights treaty bodies requested that the Office of the United Nations High Commissioner for Human Rights (OHCHR) prepare a document for discussion before their thirtieth meeting identifying the progress achieved in aligning the working methods and practices of the treaty bodies in the various areas addressed in General Assembly resolution 68/268, as well as on those areas on which the Chairs will continue to work towards enhanced alignment.

The present note by the Secretariat contains an overview of previous discussions on the subject of follow-up to concluding observations and Views, and possible elements for the consideration of and possible endorsement by the Chairs are also proposed.

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I. Introduction

1. At their twenty-ninth meeting, held from 26 to 30 June 2017, the Chairs of the human rights treaty bodies welcomed the note by the Secretariat on procedures of the human rights treaty bodies for following up on concluding observations, decisions and Views (HRI/MC/2017/4) and decided to identify common elements in relation to the practices of their respective treaty bodies concerning follow-up to concluding observations, decisions and Views (see A/72/177, para. 44). The Chairs also reiterated that treaty bodies should consider recommending to States that they establish a national mechanism for reporting and follow-up, where these did not exist (see A/72/177, para. 9).

2. The Geneva Academy of International Humanitarian Law and Human Rights, Treaty Bodies-Net, the Open Society Justice Initiative and OHCHR co-organized an expert meeting on follow-up to treaty body recommendations, which was held on 26 and 27 October 2017 in Geneva.[1] The objective of the meeting was to share experiences and good practices in relation to follow-up to concluding observations, Views and visits/inquiries; to identify key areas to align follow-up procedures to treaty body recommendations, with a view to discussing these areas further within the respective treaty bodies; and to identify areas where treaty bodies could take effective action, within their mandates, to encourage follow-up to recommendations.

3. At the above-mentioned meeting, the resource constraints of OHCHR to attend to the additional workload generated by the follow-up procedures were highlighted considering the current workload of reviewing the reports of States parties and individual communications. In particular, it was pointed out that follow-up procedures were not included in the calculation of the human resources provided by the General Assembly to OHCHR for supporting the human rights treaty bodies.

4. A further development has been the impact of the General Assembly's endorsement of the recommendation made by its Advisory Committee on Administrative and Budgetary Questions in its budget resolution (General Assembly resolution 72/261) to approve five temporary assistance positions to support the treaty bodies for two years, instead of establishing the 11 posts determined as required by the Secretary-General in his first biennial report (A/71/118).

5. Consequently, OHCHR, through letters from the High Commissioner and the Deputy High Commissioner to the Chairs on 2 on 5 February 2018, respectively, advised the treaty bodies that it needed to prioritize in order to be as effective as possible with the resources given. Therefore, some activities would need to be reduced or streamlined further to reflect a realistic and sustainable workload for the staff in view of the amount of documentation that the staff was able to prepare and process, both for the substantive secretariat but also for translation purposes, in advance of the committees' meetings. The meeting time, in turn, would have to be adapted to the documentation available for the committees' review. More specifically, in relation to the written follow-up procedures for both country reviews and individual communications, OHCHR had strongly encouraged treaty bodies to agree on a common aligned procedure that was fully streamlined and was not labour-intensive for staff. OHCHR was placing greater emphasis in its Organizational Management Plan on follow-up to and implementation of all human rights mechanisms recommendations at the national level, across OHCHR and with its other United Nations partners.

[1] See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=HRI/MC/2018/CPR.2&Lang=en.

II. Background

6. The discussion on the need to improve the treaty body procedures for following up on concluding observations, decisions and Views and for OHCHR to have the adequate financial and human resources to support treaty bodies effectively has been ongoing since at least 2003 (see HRC/MC/2017/4, para. 3). At the time, it was also recognized that enhanced capacity at the national level, within both government and civil society, was crucial to implementing human rights treaty obligations, including the obligation to report (see A/58/350, para. 17).

7. The note by the Secretariat on procedures of the human rights treaty bodies for following up on concluding observations, decisions and Views (HRC/MC/2017/4) recalls the background to this issue since 2003. The Chairs of the treaty bodies, at their twenty-third meeting, held in June 2011, adopted the document that the working group had submitted with points of agreement with a minor amendment (see HRI/ICM/2011/3-HRI/MC/2011/2, para. 61; and A/66/175, para. 4).

8. Notably, at the aforementioned meeting, the United Nations High Commissioner for Human Rights said, in her opening statement, that in the light of the ever-increasing workload which treaty bodies must absorb and the scarce resources available, treaty bodies may wish to reflect on whether such follow-up procedures should be extended to all treaty bodies, or whether their added value actually outweighed the challenges they brought. She stated that the follow-up procedures required additional meetings and costs, at a time when the treaty body system was expanding and the need for treaty bodies to apportion resources strategically was becoming increasingly urgent. She went on to say that if after a cost-benefit analysis treaty bodies came to the conclusion that follow-up procedures were vital to the treaty bodies' work, she hoped that they would seek to harmonize and strengthen the existing procedures. That could be done by drawing on some of the best practices which they would identify during their discussions. She stated that if harmonization did not take place in that area, treaty bodies would risk a further proliferation of working methods, and a decrease in the predictability and visibility of the treaty body system and in the accessibility to it.

III. Process

9. The Secretariat prepared the present note on the basis of common elements and points of agreement that have already been identified in previous meetings of Chairs and as a result of the latest expert workshop on the issue. The note deals with the written follow-up procedures of treaty bodies — and not with country-level engagement, which is beyond the scope of the present note. The present note is relevant for those committees that already have written follow-up procedures, and the Secretariat is mindful that at least one committee has discontinued follow-up (the Committee on the Rights of the Child) and another committee is considering pausing it on the basis of workload and meeting time considerations (the Committee on the Rights of Persons with Disabilities). For those committees that do not have fully developed written follow-up procedures (the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families), the discussion needs to take place as to whether this should be paused in view of the current workload and meeting time limitations.

10. The Secretariat is also mindful of the need for Chairs to have sufficient time to consult with their respective committees prior to the annual meeting of Chairs, and encourages them to discuss this issue both during their sessions and intersessionally, in view of the proposal below.

IV. Possible elements for a common aligned procedure for follow-up to concluding observations, decisions and Views for all treaty bodies

A. Possible elements for a common aligned procedure for follow-up to concluding observations

11. The proposal below is being put forward for discussion and possible endorsement at the thirtieth meeting of Chairs.

(a) Concluding observations should identify through a standard paragraph the recommendations for follow-up, with the timeline, without the need for a separate letter or document;

(b) Concluding observations should expressly invite the State party to inform the committee about its plans for implementation, within the ongoing reporting cycle, of all the recommendations in the concluding observations;

(c) One standard reminder should be sent to the State party concerned if a response has not been received by the due date;

(d) The type of recommendations targeted for follow-up should be those that are specific, measurable, achievable, realistic and time-bound (SMART). In addition, they need to be serious/urgent/protective and implementable within the relevant time frame. This list is not intended to be exhaustive;[2]

(e) The time frame should be the same for all committees. In principle, the time frame for receiving additional information on implementation of specific recommendations should be 1 or 2 years;

(f) The number of recommendations for follow-up should be limited, ideally to between two and four;[3]

(g) One cycle — this means that the rapporteur/coordinators/committee will evaluate only once the follow-up submission(s) from the State. In the course of such evaluation or assessment, the rapporteur/coordinators/committee may request additional information or clarification, and the reply thereto will be considered as part of the State party's next periodic report and/or be taken into account in the next dialogue (reporting) with the State party;

(h) The assessment criteria and the grading system remain within the purview of the follow-up rapporteur/coordinators/committee. A qualitative assessment of the information provided and of the implementation should be carried out using common benchmarks identified as A, B, C, D and E, with A being the most satisfactory in terms of quality of information provided and action taken, and E being the least satisfactory — when there has been no response or if measures taken are contrary to the recommendation. The rationale and the assessment of the committee should be made public;

(i) The Secretariat currently lacks resources to prepare summaries of follow-up reports, or submissions. The Secretariat will post submissions as received on the Internet, and it will be the responsibility of the follow-up rapporteur/coordinators/committee to

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[2] In the points of agreement adopted by the Chairs in 2011, sect. VII (A) (d) made reference to formulating clear criteria for selection of recommendations for follow-up, such as, for example, "feasibility" and "urgency". Sect. VII (A) (l) made reference to the format of recommendations, which should be "concise and formulated in a precise manner appropriate to the matter at hand" and structured "around immediate, medium-term and long-term deliverables".

[3] In the points of agreement adopted by the Chairs in 2011, sect. VI (A) (3) made reference to limiting the number of recommendations to "between two and four". Sect. VII (A) (m) made reference to "reducing the length" of concluding observations to achieve greater efficiency and impact.

prepare a draft assessment letter. The Secretariat will send the final assessment letter and reminder, as necessary, to the relevant permanent mission;

(j) The Secretariat currently lacks resources to prepare separate follow-up progress reports. Follow-up information, including reports of States parties, will be posted as received on the website cross-referencing the concluding observations. Submissions by national human rights institutions, non-governmental organizations and other stakeholders will also be posted as received on a dedicated website. The suggested word limit for each submission is 3,500 words.[4]

B. Possible elements for a common aligned procedure for follow-up to decisions and Views

12. The proposal below is being put forward for discussion and possible endorsement at the thirtieth meeting of Chairs.

(a) Upon transmittal of the Views to the State party there should be a standard paragraph accompanying the Views, and indicating a time frame for response, which (i) requests which domestic authority or contact person is specifically in charge of coordinating the Views' implementation; (ii) requests which authority is competent, in particular with respect to the remedy sought from the committee; and (iii) requests a precise time frame for implementation of each part of the remedy, including publication/translation/dissemination and non-repetition;

(b) The time frame for the State party to provide information on measures taken to comply with or follow up on the Views should be six months, starting from the date of transmittal of the Views to the State party;

(c) The time frame for comments by the author of the communication on the State party's response should be three months;

(d) If the implementation is not satisfactory, there is then a period of 18 months from the date of transmittal, with exchanges between the parties and engagement with State representatives, ideally from those delegates who were present in Geneva for the dialogue (reporting) (in order to reach more specialized State officials with targeted and technical questions on the implementation);

(e) Twenty-four months after the adoption of the Views, the committee should evaluate the status of implementation and provide its assessment. Such assessment should be transmitted to both parties, and made public;

(f) States parties should systematically be requested to provide updates on implementation during the dialogue (reporting), as is currently the practice;

(g) Both the State party and the authors should be informed of the time frame indicated above;

(h) The criteria for closure, or suspension, will be made public;

(i) The dialogue will be closed if (i) the implementation is satisfactory; (ii) the Secretariat has lost contact with the authors; (iii) there is lack of interest from the author in the implementation;

(j) The dialogue will be suspended (i) in the case of persistent refusal by the State party to implement and/or refusal to pursue the dialogue; (ii) if three years have elapsed since the adoption of the Views;

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[4] In the points of agreement adopted by the Chairs in 2011, sect. VII (A) (n) made reference to ensuring that follow-up information was "made public, unless the Convention requires otherwise".
Sect. VII (A) (o) made reference to documentation being made available "in accessible format".
Sect. VII (A) (p) made reference to having a "follow-up webpage of each committee".

(k) The committee should give the reasons for closing or suspending the dialogue in a particular case.